
(2023) 02 KL CK 0069

In the High Court Of Kerala

Case No : Writ Petition (C). Nos. 2855, 2867, 3910 Of 2023

B. Malavika Namboothiri

APPELLANT

Vs

Mahatma Gandhi University

RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2023) 02 KL CK 0069

Hon'ble Judges : Shaji P. Chaly, J

Bench : Single Bench

Advocate : Aparna C.Menon, Arun Chandran, George Sebastian, Arun Luckose Abraham

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J.

1. The captioned writ petitions are materially connected in respect of elimination of the petitioners from selection to various cultural events conducted by Sacred Heart College, Thevara to qualify the students to participate in the Mahatma Gandhi University Intercollegiate Youth Festival scheduled from 08.02.2023 to 12.02.2023 at Ernakulam. Therefore, I heard them together and proposed to pass this common judgment.

2. The petitioners in W.P.(C) Nos. 2855 of 2023 and 2867 of 2023 have participated in the Kerala Natanam competition. Only the first place winner would be selected to participate in the Mahatma Gandhi University Youth Festival. Admittedly, the petitioners could secure second and third place respectively in the intra collegiate competition. Being aggrieved, they have submitted a representation before the Principal of the College and as per the direction issued by the Principal, the said event was conducted again with all the participants. In that process, one of the petitioners i.e., the petitioner in W. P. (C) No. 2867 of 2023 was placed second and the petitioner in W.P.(C) No. 2855 of 2023 became

fourth. Even though an appeal was preferred before the Grievance Committee of the College, it was also rejected stating that the decisions of the Judges are considered to be final.

3. The paramount contention advanced by the petitioners is that as per the guidelines issued by the Mahatma Gandhi University, the Kerala Natanam competition has a duration of 15 minutes for each participants; whereas, in the guidelines issued by the Sacred Heart College, Thevara, 10 minutes is provided to each participants. But, according to the petitioners, all the participants were provided only 4 minutes and therefore, the participants could not make their performance to the fullest extent and the best manner in order to impress the Judges, and enable the Judges to evaluate the participants.

4. A counter affidavit is filed by the College in both the writ petitions refuting the allegations raised in the writ petitions. Among other contentions, it is stated that on account of the representation submitted to the Principal, the competition was conducted again and all participants were permitted to perform again on 18.01.2023. However, the petitioners could secure only the fourth and second place respectively. It is also submitted that the Grievance Committee considered the issue and was of the opinion that the evaluation made by the Judges need not be altered.

5. Insofar as W.P.(C) No. 3910 of 2023 is concerned, the petitioner participated in the Wind Instrument Western and among two participants, the petitioner became second. The grievance highlighted by the petitioner is that he performed better than the first prize winner. It is also contended that the petitioner is selected to three other cultural events and therefore, if he is permitted to participate in the intercollegiate Youth Festival, there is a likelihood of the petitioner becoming kalathilakam.

6. I have heard the learned counsel for the petitioners Sri Arun Chandran, Sri. K. Rajesh Kannan and Sri. E.D. George in the respective writ petitions, the learned Standing Counsel for the M.G University, Sri. Surin George Ipe, and the learned counsel for the Sacred Heart College Sri. George Sebastian, and perused the pleadings and material on record.

7. The discussion of facts made above would make it clear that the petitioners are challenging the intra college competition to various events on the ground that their performances were not properly judged by the Judges and consequently, they are unable to participate in the intercollegiate competition conducted by the Mahatma Gandhi University. At the outset, it is made clear that there are no allegations made by any of the petitioners that there is any proved mala fides or nepotism in the matter of evaluation made by the Judges. It is also equally important to note that the allegations made by the petitioners are in respect of the evaluation made by the Judges in the performance made by the petitioners along with others.

8. It is also submitted that due to the paucity of time, all the participants were

given less time than the one prescribed by the University and the College for performance. Anyhow, the time prescribed by the University for the intercollegiate Competition is not binding on the college to conduct the competition in the college. Moreover, petitioners could not point out any rules that would bind the colleges to adhere to the time provided by the University in its guidelines. There is no case for the petitioners that any of the participants were given more time so as to cause prejudice to the petitioners in performing their events. Therefore, it cannot be said that there is any arbitrariness or illegality on the part of the Judges or the college in the matter of granting time for the performance of the participants.

9. Insofar as the petitioner who has lost in the Wind Instrument Western is concerned, the contention is that he performed better than the first prize winner. It is a matter of evaluation by the judges while performing the event by the participants and this Court in Article 226 of the Constitution of India is not expected to sit over such an evaluation made by the Judges. It is equally important to say that it was on account of the perception achieved by the Judges that the participants were selected and therefore, I do not think, it would be appropriate for a writ court to overturn the quotient arrived at by the evaluating Judges. The issue is no more *res integra*, in view of the judgments

in *Rhony Chandra Mohan v. General Convenor Balakalotsavan and Yuvajanotsavam* [1992 KHC 211=1992(1) KLJ 515], *Devna Sumesh and Ors. v. State of Kerala and Ors.* [MANU/KE/3788/2022] and *Sweety v. State of Kerala* [1994(1) KLT SN.5 (C. No. 4)].

10. in *Rhony Chandra Mohan v. General Convenor Balakalotsavan and Yuvajanotsavam* [1992 KHC 211=1992(1) KLJ 515], it is held as follows:

4. It needs no reiteration that the award of marks and ranks in a contest of this nature is primarily the duty and responsibility of the Judges who have been appointed to judge on the merits or demerits of the various contestants. It is also a well - known fact that the ultimate difference between the top notchers in such contests is very often marginal and little and the ranks go by very low differences in marks. But that is inevitable. The judges who are experts react differently from different angles and they have different perceptions. It is not possible to have any absolute standards or absolute judges who react alike in all situations. It is precisely because of this that there is a multiplicity of judges for such contests, so that the individual predictions or tastes or ideas of one are offset by the sensitivities of the others. Since computers cannot be judges, nor the judges automations, differences based on individual perceptions are inevitable and have to be accepted. This system of assessment has therefore been adopted for the purpose of assessing the relative merit and the authorities have to depend upon the judgment of the judges appointed for the purpose. May be a different set of judges may take a different view of the matter. But that does not mean that the assessment of merits by one set of judges is lacking in validity or otherwise irregular. Assessment of merit is ultimately a matter of objective assessment by

a set of impartial judges guided by relevant principles. If that be so, the fact that the petitioner did not get A grade I and was awarded only A grade II cannot be found fault with. As stated earlier, the assessment was made by judges competent for the purpose. It is not possible for this court to sit in appeal over such awards in a proceeding under Art.226 of the Constitution. It is not within the province of this court to re-assess the merits or demerits of candidates participating in competition made by competent judges appointed for the purpose. This court can interfere only when there is a plain illegality or some mala fides or some perversity or some other grossly vitiating circumstance in the assessment of merit. So far as that aspect is concerned, the petitioner has raised certain grounds in the original petition. According to him, the judges who assessed the merits of the Bharathanatyam candidates were substitutes appointed on the spot for the original judges, without any enquiry regarding their qualifications for appointment as judges. It is also stated that Unnikrishnan, one of the judges was only a student studying Bharathanatyam and that Smt. Babita is from the same district. Thereby, it is stated, both of them are not qualified to be appointed as judges. It is also pointed out that no video photography of the competition was taken despite the mandate of the Rules for the purpose.

5. I do not think these factors vitiate the assessment of the merits. As stated earlier, the assessment of merits depends on an objective view taken by impartial judges appointed for the purpose. The petitioner or her parents did not at the time of the competition raise any objection to the eligibility or the qualifications of the judges who were appointed for assessing the merits of the Bharathanatyam candidates. Having sat on the fence and taken the chance of a decision with the judges who have been appointed, it is not open to the petitioner to contest the very eligibility of the judges when once the decision goes against her. This court will not, in exercise of the jurisdiction under Art.226 entertain such challenges, from a defeated candidate. It must also be mentioned that the judges have been appointed by the concerned authorities, who are interested in the proper conduct of the festival and the proper assessment of merit. There is no case anywhere in the Original petition that the respondents acted mala fide or with a hostile attitude towards the petitioner which made them select particular persons as judges.

6. The assessment of merit in such cases depends on the objective assessment made by judges appointed for the purpose. The fact that the petitioner was awarded only A grade II by the set of judges in question is not therefore open to challenge in a proceeding under Art.226. At the same time I do not find any reason for frustration on the part of the petitioner. After all, the difference between the first and second rank holders is only a matter of shade and not a matter of substance. If the true spirit of the festival, namely, healthy competition, is inculcated, there will be no cause for any grievances. It is not possible for this court to interfere with such assessment of merit in the absence of any other challenge to the same, I decline to entertain this Original Petition.

It is accordingly dismissed.”

11. In *Devna Sumesh and Ors. v. State of Kerala and Ors.* [MANU/KE/3788/2022], it is held as follows:

36. The common grievances raised in these writ petitions are with regard to assessment of performance and evaluation of marks in the competition by the judges, poor arrangement of stage by the organizers, technical glitches and defective audio system, lack of experts in the panel of judges, extraneous considerations in the award of marks etc.

37. With regard to the assessment of performance of candidates and evaluation of marks, as held by this Court in *Rhomy Chandra Mohan and Sweety* (supra), this Court cannot sit in appeal over the award of marks by the panel of judges in a proceedings under Article 226 of the Constitution of India. With regard to complaints of poor stage arrangements including technical glitches, poor audio system, lack of space for performance, and whether these factors had affected the performance of the contestants, are again matters which cannot be considered in a writ petition under Article 226 of the Constitution. Of course, these matters can be looked into by the appeal committees. The judges against whom allegations of extraneous considerations have been made are not parties to the writ petitions and the allegations are not supported by proof. In most cases, the contestants whose selection has been called in question are not made parties to the writ petitions. The qualification of the judges in the panel and their expertise in the particular item of competition are also not matters which this Court can determine. An appeal has been provided by the Manual to consider the complaints regarding the results of the competitions and guidelines have been laid as to the nature of jurisdiction the appeal committees can exercise. As rightly held by this Court in *Sweety* (supra), though these appellate bodies cannot be equated with ordinary judicial or quasi judicial bodies, the decision of the appeal committees shall be accepted as conclusive and final. The competitions under the Kalolsavam are held under compressed time schedule as the cultural festivals shall not lead to loss of academic days. In between the Kalolsavams at the different levels, there may not be much time left for consideration of appeals by the appeal committees and they have to dispose of the appeals within five days or before the commencement of the Kalolsavam at the next level, whichever is earlier. In spite of prescription of deposit of appeal fee of Rs. 2000/- at the revenue level, lot of appeals are being filed against the award of marks in the competitions. The attractiveness of grace marks and cultural scholarships, misplaced anxieties of parents also lead to filing of appeals in most cases. If the decisions of the appeal committees are not treated as conclusive and final in cases other than where there is gross vitiating circumstances, the entire equilibrium in the time schedule fixed for conducting the Kalolsavam would be unsettled and defeated. Though rendered in the context of examining the powers of the Upa Lok Ayukta, Human Rights Commission, Juvenile Justice Board, Civil Courts etc., to grant permission to the lost

contestants to participate in the youth festivals at higher levels, the observations of the Division Bench in *Manas Manohar* (supra) shall also bind this Court in passing interim or final orders, unless there is evidence of grossly vitiating circumstances in the evaluation and assessment of performance, for interference under Article 226 of the Constitution. I do not find any such grossly vitiating circumstances in any of these cases warranting interference under Article 226 of the Constitution. Accordingly, the writ petitions fail.

38. Though I am constrained to dismiss these writ petitions on the ground of limitation of my jurisdiction under Article 226 of the Constitution, in view of the averments in some writ petitions that the minor contestants got injured by the stage being not properly laid, uneven surface, holes and presence of broken bangles, pins and nails on the floor of the stage, I direct the Principle Secretary to Government, General Education Department to ensure that no such mishaps happen in future at the Kalolsavams at any level and in case of such mishaps, the stage managers or/and other organizers responsible for such incidents shall be proceeded against appropriately. The officers responsible for arranging the stages shall be made aware of the penal consequences that they may entail in such cases, including proceedings under the Juvenile Justice (Care and Protection of Children) Act, 2015. The Committee for Manual reforms shall make necessary provisions in the Manual in this regard.

39. Before parting with the cases, I would like to observe that, the petitioners are not less talented than those who got the top score in the competitions. It is more important to participate than to win. Winning is not everything and the parents shall also equip their children to accept failure. Distorted or misplaced anxieties of parents may make the children slip into depression. Kalolsavams shall not be a platform for excess luxury or unhealthy competitions. Hope the parents of minor litigants before this Court may understand that there may be more talented students in the poor strata of the society who cannot afford costly costume or bear other expenses for the competition or the festival. As held by this Court in *Rhomy Chandra Mohan* (supra), if the true spirit of the festival, namely, healthy competition, is inculcated, there will be no cause for any grievances.

The writ petitions are accordingly dismissed with the above observations.”

12. In *Sweety v. State of Kerala* [1994(1) KLT SN.5 (C. No. 4)], it is held as follows:

Every college or school authorities have discretion to adopt any rule or procedure to regulate the curricular or extra-curricular activities of students in their institutions. The educational authorities have also power to frame rules or by-laws for their own guidance in cases where State level or District level functions or festivals are organised to promote extracurricular activities among students. Under whatever name they are called, they are purely rules, intended to serve internal discipline among the students. The persons or authorities functioning

under such rules shall have absolute freedom to control and check the affairs of the students participating in such extra-curricular activities. Of course this freedom is subject to inherent and in-built restrictions. In maintaining internal discipline among students who participate in such functions or festivals, the persons or authorities in charge may adopt different modes for the conduct of the affairs in an orderly manner. Such persons or authorities shall not be called upon to explain their conduct in the discharge of their functions in exercise of powers available to this court under Art.226 of the Constitution. Of course the position is different if there is violation of fundamental rights of the students attending such festivals or functions by the action of such persons or authorities. In such extreme cases this court will be justified if interference is made. There are functionaries like 'Judges' Appeal committee etc. functioning under the rules framed for the conduct of competitions. Those bodies cannot be equated with ordinary judicial or quasi-judicial bodies. They are purely internal bodies of the educational institutions intended to subserve discipline among students in situations where disputes are likely to occur. The exercise of their function is completely confined to the field of Youth Festival where the discipline is absolutely necessary for the proper conduct of different competitions among the students. The decisions will have to be taken in certain cases on the spot and I fail to see how such decisions can be challenged in these proceedings. The assessment of performances of the participants are made by the 'judges'. Their wisdom and reason are final in such internal matters of educational institutions. However as an abundant caution the appeals are provided before the 'appeal committee' against the decision of the 'judges'. The decision of the 'appeal committee' shall be accepted as conclusive and final by the students and all others. That is purely a matter of observance of internal discipline. This court, will not be justified in interfering with such assessment of performance made by the appeal committee in their discretionary powers."

13. Taking into account the above said legal and factual aspects involved in the writ petitions, I do not think, the petitioners have made out any case for interference in the intra college selection made by the evaluators, there being no arbitrariness or illegality or perversity so abhorrent, justifying this Court to interfere in a writ proceedings under Article 226 of the Constitution of India.

Needless to say, writ petitions fail and accordingly, they are dismissed.